

HON. ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED COMMAND
INTERNATIONAL, LTD.,
a UK Private Limited Company,

Plaintiff,

v.

MICROFUN INC., a Washington
corporation, and
BEIJING MICROFUN CO. LTD., a
corporation of the People's Republic of China,

Defendants.

Civil Action No. 2:18-cv-00963 RSL

~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER

1. PURPOSE AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

~~PROPOSED~~ STIPULATED PROTECTIVE ORDER - 1
Case No. 2:18-cv-00863 RSL

LEE & HAYES, P.C.
701 Pike Street, Suite 1600
Seattle, WA 98101
Telephone: (206) 315-4001 Fax: (509) 323-8979

2. DESIGNATED MATERIALS

2.1 Categories of Confidential Information. A party or non-party responding to a discovery request made pursuant to the Federal Rules of Civil Procedure (a "Producing Party") shall have the right to designate documents and information it produces as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to this Order and materials designated as such will be referred to as "Designated Material" or "Designated Materials."

2.1.1 CONFIDENTIAL. "Confidential" material shall include the following documents and tangible things produced or otherwise exchanged:

a. Documents that could disclose to competitors confidential information concerning the prices charged to potential customers, business plans and strategy of a Producing Party or of the person from whom the Producing Party obtained the document;

b. Confidential internal documents relating to finances of a Producing Party or of the person from whom the Producing Party obtained the document, including internal financial reports and analyses;

c. Agreements or documents containing confidential information of a Producing Party or of the person from whom the Producing Party obtained the document that could disclose to competitors confidential information concerning specific financial terms;

d. Confidential internal documents of a Producing Party or of the person from whom the Producing Party obtained the document related to financial and sales data, peer group analyses and franchisee sales and performance comparison data; a party or non-parties' personal financial information; financial or personal information (including but not limited to, private personal information (PPI), social security numbers, driver's license numbers, bank and credit card numbers, tax information, disability information,

1 and other intimate information not publicly available); information and
2 documents that a party is legally or contractually required to keep confidential;
3 documents and information that are in good faith believed to constitute or
4 contain proprietary business information of a Producing Party or of the person
5 from whom the Producing Party obtained the document.

6 2.1.2 HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY. “Highly
7 Confidential – Attorneys’ Eyes Only” materials shall comprise the following
8 documents and tangible things produced or otherwise exchanged, which are highly
9 confidential to the proprietary and/or commercial rights of the Producing Party or of
10 the person from whom the Producing Party obtained the document:

11 a. Documents and information demonstrating marketing strategy,
12 development, and/or research of a Producing Party or of the person from whom
13 the Producing Party obtained the document;

14 b. Documents and information demonstrating business
15 methodology, processes, and procedures for commercializing products on
16 behalf of customers (e.g., trade secrets) of a Producing Party or of the person
17 from whom the Producing Party obtained the document;

18 c. Internal financial information of a Producing Party or of the
19 person from whom the Producing Party obtained the document, including but
20 not limited to, revenues, expenses, profits and other details regarding financial
21 performance.

22 2.2 SCOPE

23 The protections conferred by this agreement cover not only Designated Material (as
24 defined above), but also (1) any information copied or extracted from Designated Material; (2)
25 all copies, excerpts, summaries, or compilations of Designated Material; and (3) any testimony,
26 conversations, or presentations by parties or their counsel that might reveal Designated
27 Material.

1 However, the protections conferred by this agreement do not cover information that is
2 in the public domain or becomes part of the public domain through trial or otherwise.

3 3. ACCESS TO AND USE OF DESIGNATED MATERIAL

4 3.1 Basic Principles. A receiving party may use Designated Material that is
5 disclosed or produced by another party or by a non-party in connection with this case only for
6 prosecuting, defending, or attempting to settle this litigation. Designated Material may be
7 disclosed only to the categories of persons and under the conditions described in this
8 agreement. Designated Material must be stored and maintained by a receiving party at a
9 location and in a secure manner that ensures that access is limited to the persons authorized
10 under this agreement.

11 3.2 Disclosure of "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -
12 ATTORNEYS' EYES ONLY" Information or Items. Unless otherwise ordered by the court or
13 permitted in writing by the Producing Party, a receiving party may disclose any Designated
14 Material only to:

15 a. the receiving party's outside counsel of record in this action, as well as
16 employees of such counsel to whom it is reasonably necessary to disclose the
17 information for this litigation;

18 b. the officers, directors, and employees (including in house counsel) of
19 the receiving party to whom disclosure is reasonably necessary for this litigation, unless
20 the particular document or material has been designated "HIGHLY CONFIDENTIAL
21 - ATTORNEYS' EYES ONLY";

22 c. experts and consultants to whom disclosure is reasonably necessary for
23 this litigation and who have signed the "Acknowledgment and Agreement to Be
24 Bound" (Exhibit A). For purposes of Paragraph 3.2(c), an expert or consultant is a
25 person with specialized knowledge or experience in a matter pertinent to the litigation
26 who (1) has been retained by a party or its counsel to serve as an expert witness or as a
27 consultant in this action, (2) is not a past or current employee of a party or of a party's
28

competitor, and (3) at the time of retention, is not anticipated to become an employee of a party or of a party's competitor;

d. the court, court personnel, and court reporters and their staff;

e. independent litigation support services, including persons working for or as court reporters, graphics or design services, services which assist counsel in jury selection, trial consulting services, and photocopy, document imaging, and database services retained by counsel and reasonably necessary to assist counsel with the litigation of this action, provided that counsel for the party retaining the support service instructs the service not to disclose any Designated Material to third parties and to immediately return all originals and copies of any Designated Material;

f. the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

g. any designated arbitrator or mediator who is assigned to hear this matter, or who has been selected by the parties, and his or her staff.

h. For Designated Material designated "CONFIDENTIAL – ATTORNEYS' EYES ONLY," access to, and disclosure of, such material shall be limited to individuals listed in paragraphs 3.2(a) and (c-g).

3.3 Filing Designated Material. Before filing Designated Material or discussing or referencing such material in court filings, the filing party shall confer with the Producing Party, in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the Producing Party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the Producing Party must identify the basis for sealing the specific Designated Material at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal. A party who seeks to maintain the confidentiality of

1 its information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not
2 the party filing the motion to seal. Failure to satisfy this requirement will result in the motion
3 to seal being denied, in accordance with the strong presumption of public access to the Court's
4 files.

5 4. DESIGNATING PROTECTED MATERIAL

6 4.1 Exercise of Restraint and Care in Designating Material for Protection. Each
7 party or non-party that designates information or items for protection under this agreement
8 must take care to limit any such designation to specific material that qualifies under the
9 appropriate standards. The Producing Party must designate for protection only those parts of
10 material, documents, items, or oral or written communications that qualify, so that other
11 portions of the material, documents, items, or communications for which protection is not
12 warranted are not swept unjustifiably within the ambit of this agreement.

13 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
14 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
15 unnecessarily encumber or delay the case development process or to impose unnecessary
16 expenses and burdens on other parties) expose the Producing Party to sanctions.

17 If it comes to a Producing Party's attention that information or items that it designated
18 for protection do not qualify for protection, the Producing Party must promptly notify all other
19 parties that it is withdrawing the mistaken designation.

20 4.2 Manner and Timing of Designations. Except as otherwise provided in this
21 agreement (see, e.g., second paragraph of section 4.2(a) below), or as otherwise stipulated or
22 ordered, disclosure or discovery material that qualifies for protection under this agreement
23 must be clearly so designated before or when the material is disclosed or produced.

24 a. Information in documentary form: (e.g., paper or electronic documents
25 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
26 proceedings), the Producing Party must affix the word "CONFIDENTIAL" or
27 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each page that
28

contains such material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins).

b. Testimony given in deposition or in other pretrial proceedings: the parties and any participating non-parties must identify on the record, during the deposition or other pretrial proceeding, all protected testimony, without prejudice to their right to so designate other testimony after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or exhibits thereto, as confidential. Prior to the expiration of the fifteen day period for designation, a deposition transcript shall be treated as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Pages of transcribed deposition testimony or exhibits to depositions that reveal Designated Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement. If a party or non-party desires to protect Designated Material at trial, the issue should be addressed during the pre-trial conference.

c. Other tangible items: the Producing Party must affix in a prominent place on the exterior of the container or containers in which the information or item is stored the word “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

4.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Producing Party’s right to secure protection under this agreement for such material. Upon timely correction of a designation, the receiving party must make reasonable efforts to ensure that the material is treated in accordance with the provisions of this agreement.

1 5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 5.1 Timing of Challenges. Any party or non-party may challenge a designation of
3 confidentiality at any time. Unless a prompt challenge to a Producing Party's confidentiality
4 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
5 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
6 challenge a confidentiality designation by electing not to mount a challenge promptly after the
7 original designation is disclosed.

8 5.2 Meet and Confer. The parties must make every attempt to resolve any dispute
9 regarding confidential designations without court involvement. Any motion regarding
10 confidential designations or for a protective order must include a certification, in the motion
11 or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
12 conference with other affected parties in an effort to resolve the dispute without court action.
13 The certification must list the date, manner, and participants to the conference. A good faith
14 effort to confer requires a face-to-face meeting or a telephone conference.

15 5.3 Judicial Intervention. If the parties cannot resolve a challenge without court
16 intervention, the Producing Party may file and serve a motion to retain confidentiality under
17 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden
18 of persuasion in any such motion shall be on the Producing Party. Frivolous challenges, and
19 those made for an improper purpose (e.g., to harass or impose unnecessary expenses and
20 burdens on other parties) may expose the challenging party to sanctions. All parties shall
21 continue to maintain the material in question as designated until the court rules on the
22 challenge.

23 6. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
24 OTHER LITIGATION

25 If a party is served with a subpoena or a court order issued in other litigation that
26 compels disclosure of any information or items designated in this action, that party must:

1 (a) promptly notify the Producing Party in writing and include a copy of the
2 subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to
4 issue in the other litigation that some or all of the material covered by the subpoena or order is
5 subject to this agreement. Such notification shall include a copy of this agreement; and

6 (c) cooperate with respect to all reasonable procedures sought to be pursued by
7 the Producing Party whose Designated Material may be affected.

8 7. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

9 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
10 Designated Material to any person or in any circumstance not authorized under this agreement,
11 the receiving party must immediately (a) notify in writing the Producing Party of the
12 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
13 protected material, (c) inform the person or persons to whom unauthorized disclosures were
14 made of all the terms of this agreement, and (d) request that such person or persons execute
15 the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

16 8. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
17 PROTECTED MATERIAL

18 When a Producing Party gives notice to receiving parties that certain inadvertently
19 produced material is subject to a claim of privilege or other protection, the obligations of the
20 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
21 provision is not intended to modify whatever procedure may be established in an e-discovery
22 order or agreement that provides for production without prior privilege review. The parties
23 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

24 9. NON-TERMINATION AND RETURN OF DOCUMENTS

25 Within 60 days after the termination of this action, including all appeals, each receiving
26 party must return all Designated Material to the Producing Party, including all copies, extracts
27 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
28

1 destruction. Notwithstanding this provision, counsel are entitled to retain one archival copy of
2 all documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
3 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
4 work product, even if such materials contain Designated Material. The confidentiality
5 obligations imposed by this agreement shall remain in effect until a Producing Party agrees
6 otherwise in writing or a court orders otherwise.

7 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

8 By: s/ Robert J. Carlson

9 Robert J. Carlson, #18455

10 Lee & Hayes, P.C.

11 701 Pike Street, Suite 1600

12 Seattle, WA 98101

13 Telephone: (206) 315-4001

14 Fax: (206) 315-4004

15 Email: carlson@leehayes.com

16 Attorneys for Plaintiff United Command
17 International, Ltd.

By: s/ Erin Kolter

J. Michael Keyes, #29215

Erin Kolter, # 53365

Dorsey & Whitney LLP

Columbia Center

701 Fifth Avenue, Ste. 6100

Seattle, WA 98104

Telephone: (206) 903-8800

Emails: Keyes.Mike@Dorsey.com

Kolter.Erin@Dorsey.com

Attorneys for Defendants Microfun Inc.,
and Beijing Microfun Co. Ltd.

18 PURSUANT TO STIPULATION, IT IS SO ORDERED

19 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of
20 any documents in this proceeding shall not, for the purposes of this proceeding or any other
21 federal or state proceeding, constitute a waiver by the Producing Party of any privilege
22 applicable to those documents, including the attorney-client privilege, attorney work-product
23 protection, or any other privilege or protection recognized by law.

24 DATED: Oct. 3, 2019



26 ROBERT S. LASNIK

27 United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

[print or type full address], declare under penalty
of perjury that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Western District of Washington on [date]
in the case of *United Command International, Ltd. v. Microfun Inc.*, Case No. 2:18-cv-00963-
RSL. I agree to comply with and to be bound by all the terms of this Stipulated Protective
Order and I understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose
in any manner any information or item that is subject to this Stipulated Protective Order to any
person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____